REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 89, 98, 123, 130, 131, 132, 139 and 140 were amended. Independent claims 123 and 132 were amended to remove the word "immediate" and put it in a dependent claim. Dependent claims 130 and 139 were amended to remove a possible ambiguity in the claim. Dependent claims 131 and 140 were amended to modify the word "qualified" to indicated that it means qualified "for the new open position." Claim 89 and 98 were amended to clarify that one method of selecting is by making a click on the position or an acceptance button displayed on the worker's respective web page, for example. New dependent claim 141 and 142 are added that will be discussed below.

As noted, the examiner should be aware that the following patent and co-pending patent applications have the same ultimate assignee, and relate to similar subject matter, and some of these applications have received office actions:

10/880589 fld 7-1-04 (rejection received)
7,430,519 Issued 9-30-08
11/643769 fld 12-22-06
12/285121 fld 9-29-08
90/008,803 on Patent No. 6,675,151 (rejection received—Response filed—Notice of Intent to Issue Ex Parte Reexamination Certificate)

The examiner is invited to review these other co-pending applications as she deems appropriate.

As noted above, the word "immediate" has been removed from Claims 123 and 132. The word "direct" has been added to both of these claims in one location, to indicate that there is no further decision-making that takes place after receipt of the acceptance from the worker. New dependent claims 141 and 142 have been added to require performance of the

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assignments "immediately." The use of the word *"immediate"* means that the system starts a transaction to fulfill the position on receipt of the acceptance and no other worker acceptance subsequently received can jump ahead or override this. Note that this does not require that the posting on the respective web pages immediately be removed. But it is no longer possible for another worker to electronically accept the position. This would be clear to one or ordinary skill in the art. A Declaration by Roland Thompson, one of the principals in the assignee for the subject application, is attached on the meaning of "immediate."

The claims were rejected as obvious under 35 USC 103 over Clark et al. (US 5,164,897), in view of Donnelly (US 6,049,776), in view of Rogers (HR Magazine, paragraph 16), and further in view of McGovern (US 5,978,768). This rejection is respectfully traversed and reconsideration is requested.

The problem that applicant discovered at the time of the claimed invention was how to use preferences for particular workers in an essentially broad-band system of web posts to the company's general web site, where the workers to fill positions have already been vetted, but there is a preference for certain preferred workers for certain jobs, and where time is of the essence to fill the position, e.g., a teacher calls in sick at 6 pm of the day before she is to teach. But putting the position announcement out on the company's general website will be seen by everyone who accesses the general web site and will not allow the opportunity to fill the position with one of the preferred workers, if possible (for example, a substitute who has taught that class before). Yet, the position must be filled before the start of the next school day.

The invention as claimed by applicant is, in part, for the company, or a system contracted by the company, that awards the jobs, to filter workers based on qualifications, to set up and to host individual web pages for the respective workers, and then to post offers (not mere information inviting a submission of a resume) of the position that that respective worker is qualified to fill on his/her respective web page, and then to receive acceptances of the offered position from that individual. But making offers to all qualified workers on their respective web pages hosted by the awarding company or system, would still not work with preferences. Part of the invention as a whole, discovered by applicant, is to not only have the offering company or system host individual worker web pages, and post offers that can be accepted with no further decision-making by the offeror, but to provide software to form the workers determined to be qualified into at least two tiers, and to provide a timed offer that can

be accepted by the system only from the one or more workers in a preferred tier (e.g., the offer is either not shown to qualified workers in other non-preferred tiers during this time period, or the offer cannot be accepted by other qualified workers during this time period, for example, it is not clickable to trigger an acceptance from the qualified worker that is in the non- preferred tier, for example, or can only be accepted via text messaging of an acceptance from the preferred worker during this time period). If no acceptance is received from one of the workers in this subset of workers within the prescribed specified time period, then the position offer (assignment of which may be triggered simply by responding to a text message on a cell phone or other PDA, or clicking the position or an acceptance button displayed on her/his respective web page, for example) is made available in the system for acceptance also by this other non-preferred tier of qualified workers.

Claim 123 claims the computer logic operation of posting to a web page associated only with a preferred worker, an offer to accept the posted position, which the preferred worker can accept by sending an electronic selection via an electronic appliance, e.g., responding to a text message on a cell phone or other PDA, or clicking the position or an acceptance button displayed on her/his respective web page, for example, to thereby trigger an immediate assignment of the position. The system provides exclusive availability of this position to the one or more preferred workers for a specified period of time. If the worker sends an electronic acceptance of the position, then the system assigns the position to the preferred worker that sent the electronic acceptance, without any further decision-making processes carried out by the system or manually by the administrator to weigh the attributes of the workers, e.g., no comparing of the resumes of workers that have sent in requests for the position can occur, for example. **If no electronic acceptance is received by the system within the specified time period,** then the open position is made available to other workers in a non-preferred tier to allow them to trigger an assignment of the position. The claimed computer operation comprises a **timed availability by computer** of open positions to at least two tiers of worker web pages, preferred workers and other workers. See the claim limitations below:

> "the one or more computers configured for notifying the
> one or more preferred workers that the new open position is
> now available for selection **by at least posting information**
> **about the new open position to each of the respective one or**

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more worker web pages associated only with the one or more respective preferred workers;

the one or more computers configured **for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic selection** of the new open position from one of the one or more preferred workers and removing the position as an available for selection open position;

the one or more computers configured **for automatically** making available for selection the new open position **to one or more additional respective worker web pages** associated only with one or more additional respective workers that are qualified, **if one of the one or more preferred workers has not selected the new open position before expiration of the specified time period.**

THE REFERENCE CLARK: The claims have been rejected under 35 USC 103 over Clark et al. (US 5,164,897) in view of three other references. Clark is directed to matching personnel to three sets of job criteria in three different data files. A first group of employees is obtained by matching job titles and a corresponding employee code. A second group of employees is obtained based on industrial experience. A third group of employees is obtained based on special skills. Then employee records for those employees in all three groups are selected. See the Abstract and Figs. 1a and 1b and the Summary of Invention for Clark. As the examiner states, Clark discloses filtering based on criteria.

The examiner cites column 7, lines 57-67 as disclosing the one or more computers assigning the new open position, after expiration of a specified time period, to one of the qualified workers for whom the new position is made available for selection, in response to receipt of an electronic selection of the new open position from that qualified worker.

The cited column 7, lines 57-67 in Clark is actually a direct teach-away to the claimed computer logic. In that paragraph, which continues into column 8, Clark notes that his selection process is explained in the Operation of the Invention section. In this Operation section, Clark explains that the "selection" refers to the **selection of resumes to list in a report for the client company**. See Fig. 6 and column 14, line 7 – column 15, line 31. The resumes in the report of Fig. 6 may then be reviewed by the company user. See column 14, lines 55-56.

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Applicant has found no disclosure of Clark sending an offer to an employee that the employee can accept by a communication to the system, where the receipt of the acceptance by the system automatically triggers assignment of the position to the accepting employee, without further decision-making by the company.

Applicant has found no disclosure of Clark using web pages, much less a teaching of Clark hosting a separate web page for each of a plurality of workers, with each different respective worker web page associated with only the respective worker.

Applicant has found no disclosure of Clark posting an offer of a position on a separate web page of the respective employee, that the employee can accept, without further decision-making by the company.

Applicant has found no disclosure of Clark providing the programming to provide a timed availability of open positions to at least two tiers of employee web pages.

THE REFERENCE DONNELLY: The second reference cited in this 4-way combination is Donnelly. The examiner, at page 3 of the Office Action, cites Donnelly, column 13, lines 8-35, as disclosing providing an immediate response to an electronic receipt of a position selection.

Donnelly is directed to a resource management system (RMS) with a database of employee skills and their respective schedules. A calendar functionality is provided to determine employee availability to staff a particular project. The RMS system reviews the individual calendars of the employees that are determined to be qualified, and then assigns the positions to staff the project to the respective qualified employees that have open time on their respective calendars. See the **Abstract** of Donnelly. The respective electronic calendars of those assigned employees are then updated to reflect this new company assignment to the project. The reference by the examiner to column 13, lines 8-35, states that the company assigns the project to the respective qualified employee (lines 16-17), and then updates in real time the employee's respective workbench calendar (lines 30-31). If the project is tentative, and if it is subsequently cancelled, then the respective calendars are updated and the employees are made available for other assignments (lines 9-13, and column 18, lines 20-29).

Applicant has found no disclosure in Donnelly of workers receiving an offer, or transmitting an acceptance, which causes a direct assignment, with no further decision-making.

<u>Donnelly is a direct teach-away</u> from the claimed invention, as it teaches a company assignment of the positions without employee acceptance and without timed availability with respect to at least two tiers of workers (e.g., the preferred workers and the other workers).

THE REFERENCE ROGERS: The third reference cited in this 4-way combination, is Rogers. The examiner cites paragraph 16 of Rogers for posting onto personal web pages positions for which the worker is qualified, and notifying the worker that the position is now available for selection.

What Rogers discloses is <u>www.hotjobs.com</u>, an Internet recruiting website, that added a functionality at that time to provide personal home pages for the respective job seekers, and to list on the respective home pages statistics on how their respective resumes have been used in searches by employers to the hotjobs website, and to alert the job seeker with an email if new jobs are listed that meet the job seeker's criteria. Rogers states as follows: "New enhancements include password-protected personal home pages from which applicants can manage job search activities. By using personal home pages, applicants can access statistics on how often their resume has been used in employer searches and set up a personal search agent **that sends e-mails alerting applicants to new jobs that match their search criteria.**"

Roger teaches nothing about a job-offering system that sends out offers to workers, that the worker can accept, which acceptance directly causes the job assignment to the worker. Rogers does not even disclose filtering based on company criteria. Rather, the limited filtering that Rogers performs is based on the job applicant's own search criteria for the job for which he/she is looking.

Rogers discloses nothing about **a system where receipt of an electronic acceptance from a worker automatically assigns the position to the accepting worker, directly and without further decision-making processing. Likewise, Rogers discloses nothing about timed availability, by computer, of open positions to at least two tiers of worker web pages (e.g., the preferred workers and the other workers. Also, there is nothing in either**

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Clark or Rogers or Donnelly to explain or suggest how one of ordinary skill would modify Clark to incorporate personal web pages to workers, and how this would be used in Clark. And claim elements continue to be missing from the combined teachings of the references, even with this unlikely combination.

THE MCGOVERN REFERENCE: The fourth reference in the 4-way combination is McGovern. The examiner argues that McGovern discloses automatically assigning the new position to one of the preferred workers and immediately removing the position as an available position, citing Fig. 6, column 8, lines 14-26, and column 10, line 66 – column 11, line 18. That is NOT what applicant is claiming. What is claimed in the present application is the system notifying one or more preferred workers of the new position and assigning to the first preferred worker to transmit an acceptance, in the context of timed availability programming which opens the position availability to another tier of other workers if no preferred worker accepts during the specified time period.

Moreover, McGovern teaches away from the claimed invention. McGovern does NOT teach automatically assigning a position. Fig. 6 of McGovern, cited in the Office Action, is a tool bar for a company administrator, the "hiring contact," to add new positions to the website. Column 8, lines 14-26 explains that the company administrator can manually add open positions and can manually delete positions using the tool bar. Column 10, line 66 – column 11, line 18 of McGovern again primarily discusses manual deletion, but adds the feature of automatic deletion, based on previously entered dates provided by the company hiring contact.

McGovern notes that the position may only be open for a certain period of time (column 9, lines 41-55), and then may be deactivated automatically (column 11, lines 1-7).

But, McGovern **deactivates** the position for **all** job applicants. McGovern teaches or suggests nothing about setting up at least two tiers of applicants (e.g., a preferred set of workers and other workers), not deactivating the position for all workers, but rather doing the opposite, i.e., opening/offering the position to the second tier of workers, after the time period has lapsed.

The examiner cites as motivation for one of ordinary skill in the art to combine these references in a 4-way combination of "McGovern, within the system of Clark, Donnelly, and Rogers, with the motivation of providing a method and apparatus to organize and screen job seekers on a computerized network, and to notify a job seeker

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when a suitable position is available (column 3, lines 55-65)." **But this is not what is claiming. Applicant is not claiming a notification system. Rather applicant is claiming a system for forming qualified workers into multiple tiers of qualified workers, and programming the system to facilitate a timed availability for acceptance, and then triggering an assignment in direct response to receipt of an acceptance.**

This recited motivation does not suggest the claim limitations or how to create or enable a system with these claim limitations:

> the one or more computers configured **for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic selection** of the new open position from one of the one or more preferred workers and removing the position as an available for selection open position;

> the one or more computers configured **for automatically** making available for selection the new open position **to one or more additional respective worker web pages** associated only with one or more additional respective workers that are qualified, **if one of the one or more preferred workers has not selected the new open position before expiration of the specified time period**
> the one or more computers configured for assigning the new open position, **after the expiration of the specified time period**, to one of the qualified workers for which the new open position is made available for selection in direct response to receipt of an electronic selection of the new open position from that qualified worker.

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In other words, even if one of ordinary skill could combine these four diverse teaching (which he/she cannot), the computer operations of the elements of the claim, **as a whole,** would still be missing.

Accordingly, no prima facie case for obviousness of the invention **"as a whole,"** under 35 USC 103 has not been made. There are multiple teach-aways in each of these 4 references. No **"articulated reasoning with some rational underpinning"** to support an obviousness rejection of the invention claims, as a whole, is set forth, per the requirement of

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KSR Int'l Co. v. Teleflex, Inc., 127 S.Ct. 1727 (2007). The presence of these teach-aways indicates that no such rationale exists.

Thus, claim 123 and claims dependent thereon are allowable for these reasons, and also in their own right based on the additional limitations that they add. Method claim 132 and claims dependent thereon are allowable for the similar reasons.

Accordingly, it is requested that this rejection of the claims be reconsidered and withdrawn, and passed to issue.

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.

Respectfully submitted,

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